

**LODI CITY COUNCIL
SPECIAL CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
WEDNESDAY, MARCH 11, 2009**

A. Roll call

The Special City Council meeting of March 11, 2009, held at Hutchins Street Square, 125 South Hutchins Street, Lodi, was called to order by Mayor Hansen at 6:39 p.m.

Present: Council Member Hitchcock, Council Member Johnson, Mayor Pro Tempore Katzakian, Council Member Mounce, and Mayor Hansen

Absent: None

Also Present: City Manager King, City Attorney Schwabauer, and City Clerk Johl

B. Public Hearings

B-1 Public Hearing to Consider the Appeals of Browman Development Company and Wal-Mart Stores, Inc. Regarding the Decision of the Planning Commission to Not Certify the Final Revised Environmental Impact Report Regarding the Lodi Shopping Center Project Located at 2640 West Kettleman Lane (CD)

Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Hansen called for the public hearing to consider the appeals of Browman Development Company and Wal-Mart Stores, Inc. regarding the decision of the Planning Commission to not certify the Final Revised Environmental Impact Report regarding the Lodi Shopping Center Project located at 2640 West Kettleman Lane.

Mayor Hansen provided a brief overview of the process for the public hearing.

As a quasi-judicial hearing, the following disclosures were made:

Mayor Hansen disclosed that he had a telephone call with Daryl Browman and Jessica Berg. Mr. Hansen also disclosed he met with Chris Podesto and was provided a packet of documents made a part of the record.

Council Member Mounce stated she did not have any quasi-judicial contacts since the last meeting of December 10, 2008.

Mayor Pro Tempore Katzakian disclosed he had a telephone call with Daryl Browman.

Council Member Hitchcock disclosed that she had a telephone call with Brett Jolley.

Council Member Johnson disclosed that he had a telephone call with Daryl Browman and Jessica Berg. Mr. Johnson also disclosed that he met with Chris Podesto.

Interim Community Development Director Rad Bartlam provided a PowerPoint presentation regarding the appeal of the Lodi Shopping Center. He specifically discussed the final revised Environmental Impact Report (EIR), background, zoning and vicinity map, aerial view, summary of environmental and other impacts including energy and agricultural, additional project objectives, alternative project location, and landscape plan.

In response to Council Member Hitchcock, Mr. Bartlam stated the latest documents submitted to the City Council after the agenda packet was prepared as blue sheets includes a package from

Sheppard, Mullin, Richter and Hampton, letter from Erin Rios of Wal-Mart, correspondence from BAE, and a package of documents from Attorney Donald Mooney, as well as citizen correspondence.

In response to Council Member Hitchcock, Mr. Bartlam stated from practical experience and in his opinion the City Council can consider the differing opinions and choose which experts to believe or not and/or give greater weight to.

Daryl Browman, developer of the proposed project, provided comments with respect to the involvement of other businesses in the project other than Wal-Mart, the history of the proposed project, the reputation of his development company in the community, overall portfolio of retail and vacancy rates, similar projects in other communities, creating economic synergy in retail spaces, solidifying intersection of Lower Sacramento Road and Kettleman Lane as a retail location, creation of jobs, sales tax growth, adequateness of the EIR, and recommendation to certify the EIR.

In response to Council Member Hitchcock, City Attorney Schwabauer stated that, in regard to prior comments and documents submitted at the December 10, 2008, meeting, they will be a part of the record for California Environmental Quality Act (CEQA) purposes.

Brett Jolley, attorney from Herum and Crabtree representing Lodi First, provided comments with respect to urban decay and the analysis of the EIR withstanding scrutiny, code enforcement to address blight in the community, funding available to address blight, assertion that there is no blight, financial challenges for the City and nation at large, water supply assessment, more than 1,000 employees triggering water supply assessment requirement, and declaration for disqualification of Judge Humphreys.

In response to Council Member Johnson, Mr. Jolley stated he is not suggesting that Mr. Browman does not have the capital to pull the project off. Mr. Jolley stated his point is that the project will affect other shopping centers in town that have less success and the EIR and urban decay affects the entire community.

In response to Council Member Hitchcock, Mr. Jolley stated the alternative projects must meet the two prong test of meeting the objectives of the project and reducing significant impacts and he did not believe the three alternatives listed met those requirements. Mr. Jolley stated there is case law overturning an EIR because the alternatives were not properly addressed.

In response to Council Member Hitchcock, Mr. Jolley stated the Laurel Heights case illustrates the concept that what is required in an EIR must in fact be included in that EIR and not submitted as separate documentation for consideration beyond the four corners of the document. Mr. Jolley stated the global climate change concerns should have been addressed in the EIR itself and gone through the EIR process.

In response to Council Member Hitchcock, Mr. Schwabauer stated that, while he agrees that the issue needed to be addressed, CEQA is clear that there needs to be a finish line and an issue that arose after the fact does not specifically need to be addressed in the EIR. Special Counsel Jon Hobbs stated the law does not require consideration of every single alternative, only a reasonable range of alternatives is needed to meet CEQA requirements. Mr. Hobbs stated the alternatives do need to meet most if not all of the project objectives and reduce impacts.

In response to Council Member Hitchcock, Mr. King stated the intent for listing Flag City as an alternative was likely the ability to locate a reasonable location of sufficient size for the proposed project. Mr. Schwabauer stated there may not have been another location within the City to accommodate the proposed project size.

In response to Council Member Hitchcock, Mr. Schwabauer stated that, in order to impose conditions on an applicant, the City Council must first find a basis for imposing those conditions through certain findings. Mr. Schwabauer stated it is important to distinguish urban decay from blight, which is a technical term used in redevelopment law. Mr. Schwabauer stated the City Council is free to determine whether the Planning Commission was correct or erred in its denial of the certification.

In response to Mayor Hansen, Mr. Jolley stated that his firm is Herum and Crabtree, the firm represents similar groups opposed to Wal-Mart in other jurisdictions, the firm is dealing with a similar EIR issue in approximately eight other cities, most of those cities are Super Centers versus a regular Wal-Mart, Dr. King has been hired as an expert by the firm, the firm's position is to present an advocacy point on behalf of their clients, he is unaware of the success rate at stopping Wal-Marts, the goal is often to get additional information and not necessarily stop the projects, his definition of win is where a trial court grants the judgment for a writ of mandate, and regardless of the outcome for the evening the City will need to go back to Court for the writ.

In response to Council Member Johnson, Mr. Jolley stated the City is required to go back to the Court for the writ of mandate.

In response to Council Member Mounce, Mr. Bartlam stated urban decay does not have a specific definition in CEQA, although you will know it when you see it, and it is up to some level of individual interpretation. Mr. Bartlam stated generally speaking urban decay is more than just a vacant store; although, a vacant store coupled with graffiti, vandalism, broken windows, an unkempt parking lot, and a general state of deterioration may constitute urban decay.

In response to Council Member Mounce, Mr. Jolley stated urban decay comes from case law and is related to blight. He stated Lodi found blight in the City as a part of redevelopment in 2002.

In response to Mayor Hansen, Mr. Schwabauer confirmed that blight as defined in redevelopment and urban decay cannot be used interchangeably.

Donald Mooney, representing Citizens for Open Government, provided comments with respect to the reservation of certain claims through an agreement, concerns under the Brown Act pertaining to the notice not referencing findings and statement of considerations, new information that may need to be addressed with environmental concerns, economy based financial conditions requiring additional analysis, and water quality and waste discharge concerns to be addressed in the EIR.

In response to Council Member Hitchcock, Mr. Schwabauer stated that, although it is a different world and local and national climate has changed, CEQA and litigation set a finish line, the res judicata doctrine prevents everything from being raised that was not already raised, project approval is not before the City Council for consideration tonight, community benefits can be looked at during the project approval process, and the focus of the meeting tonight is only whether the EIR meets the requirements to be certified.

In response to Mayor Hansen, Mr. Schwabauer stated he disagrees with Mr. Mooney's assertion that the notice is insufficient as the Brown Act requires a general description of what is at issue and what is being done. Mr. Schwabauer stated the Planning Commission considered the information that is before the Council now on appeal and, while he cannot guarantee the other side will not sue, he can say that he is providing a conservative opinion on this issue.

Alexis Palosi, representing Browman Development, provided general comments with respect to the BAE response to Dr. King, the state of the current economy, the long-term market for retail projects versus day-to-day conditions, the water supply assessment being inapplicable because

the number of employees is less than 1,000, global warming addressed in good faith although not needed under res judicata, and certifying one resolution without findings and statement of considerations to keep the process moving.

Mr. Jolley provided comments regarding urban decay and an insufficient findings analysis, the \$680,000 payment for downtown based on an economic nexus, the need for a water supply assessment, and the San Joaquin Raptor case.

Mr. Mooney provided comments regarding limiting the action to certification for Brown Act purposes, not limiting the Planning Commission for project approval to allow other alternatives, and to be free of CEQA and Brown Act violations.

Mr. Schwabauer stated that, although he disagrees with the argument regarding a Brown Act violation because the resolutions are the same as what was before the Planning Commission, he is comfortable with proceeding with the certification only if the parties decide to do so and the issue will be going back to the Planning Commission regardless.

Mayor Hansen opened the public hearing for public comment.

Public Comments

Mark Silveira of Universal Sweeping spoke in favor of the proposed project based on his experience with Browman Development and the company's high standards for development and maintenance of properties.

Bill Freitas spoke in opposition to the proposed project based on his concerns regarding economic challenges and the potential negative affect on the community.

Patricia Sanchez spoke in opposition to the proposed project based on her concerns regarding the negative affect on the grocery businesses in the community and economic challenges.

Brad Clark spoke in opposition to the proposed project based on his concerns regarding negative conditions at the Stockton Wal-Mart, urban decay, and overturning the Planning Commission decision.

Chris Podesto spoke in opposition to the proposed project based on his concerns regarding the negative affects of the project to the east side of the community, additional studies needed, and the longer vision for the community.

Wendel Kiser, Planning Commissioner, spoke in regard to the questions that the Planning Commission had regarding the consideration of urban decay in the EIR, carbon footprints, and AB 32. Mr. Kiser asked the City Council to thoroughly consider those questions as well.

Cheryl Nitschke spoke in favor of the proposed project based on her belief that the project will benefit the community, revenue possibilities, one-stop shopping for citizens, and employee salaries and benefits.

Dennis Sattler spoke in opposition to the proposed project based on his concerns regarding EIR insufficiencies, the economic climate, a weakened retail market, and the negative impact on the wine industry.

Quintin Williams spoke in opposition to the proposed project based on his concerns regarding the negative impact to the east side of the City, economic challenges, and the need to spend time on the wine industry.

Jason Elliott spoke in favor of the proposed project based on the good reputation of maintenance of properties owned by Browman Development and the creation of jobs.

Daniel McNeer spoke in favor of the proposed project based on project endorsement by several current tenants of Browman Development, sufficiency of the EIR, strengthening of the surrounding corridor, additional revenues, and job creation. Mr. McNeer also submitted letters by tenants in support of the proposed project for the record.

Andrea Violett spoke in favor of the proposed project based on Wal-Mart being asked to contribute more than other businesses, Food-4-Less as an example, people still shopping in spite of the economy, and free enterprise. In response to Council Member Hitchcock, Ms. Violett stated she is only a customer and not a Wal-Mart employee as she is employed by Caltrans.

Dave Kirsten, Planning Commissioner, spoke in regard to the adequacy of the EIR, cumulative affects of urban decay, the insufficient findings of the same, the decision of the Planning Commission, and the need for additional information. In response to Mayor Hansen, Mr. Kirsten stated his recommendation would be to return the matter to the Planning Commission for further consideration without overturning the Planning Commission decision so that the Planning Commission can further consider the EIR.

Robin Rushing spoke in opposition to the proposed project based on his concerns regarding the negative impact on smaller businesses and the economic climate.

Elliot Stein of Richard Ellis spoke in favor of the proposed project based on the tax analysis provided by his firm, which outlines the tax specifics for the proposed project. A brief discussion ensued between City Council regarding the procedure for public comment and presentation by proponents and opponents. In response to Council Member Mounce, Mr. Stein stated the \$1.4 million make-up is outlined in the memorandum for the Lodi Shopping Center, which includes the Wal-Mart and the 11 retail pads. Discussion ensued between Council Member Mounce and Mr. Stein regarding the make-up of the numbers, the tax increment numbers, and the change in the numbers. In response to Council Member Hitchcock, Mr. Stein stated the diverted sales includes increases in supply and less demand and sales from other businesses in the existing trade area coming to the new shopping center. Council Member Hitchcock asked that a copy of the previous City report stating there would be no switch in tax dollars be provided to Mr. Stein.

Dennis Norten spoke in favor of the proposed project based on possible benefits to employees of the shopping center and the community.

Stan Finberg spoke in opposition to the proposed project based on his concerns regarding the negative affect on other businesses in the community, the economic downturn, and urban decay and EIR considerations. In response to Council Member Johnson, Mr. Finberg stated his shopping center is near the K-Mart center on Cherokee Lane.

Terrie Hedden spoke in opposition to the proposed project based on her concerns regarding urban decay, empty commercial areas in Lodi, the number of vacancies, and need for additional information.

Ruth Miller spoke in favor of the proposed project based on possible benefits to the community and job creation.

Kyle Hampton spoke in favor of the proposed project based on free enterprise, consumer choice, and job creation. In response to Council Member Hitchcock, Mr. Hampton stated he is speaking

in his capacity as a resident of Lodi and is not affiliated with anyone.

Douglas Flemming, representative of the grocery employees union, spoke in opposition to the proposed project based on his concern regarding the negative affects on grocery stores and other businesses, as well as the weakened economic conditions.

Marlene Borchers, Lodi Wal-Mart Store Manager, spoke in favor of the proposed project based on possible benefits to employees, job creation, and overall involvement and benefits to the community.

Lisa Vigil spoke in opposition to the proposed project based on the negative affect on the local produce suppliers and purchases.

Andrea Leisy spoke based on her home interest on Howard Street in Lodi and provided an overview of the documents and analysis provided by both the proponents and opponents of the proposed project.

Aaron Rios, Wal-Mart public affairs representative, spoke in regard to the ongoing history and current status of the proposed project. Mr. Rios also spoke regarding project and process discrimination. In response to Council Member Hitchcock, Mr. Rios stated Wal-Mart did not have prior knowledge of the process for the previous public hearing. In response to Council Member Mounce, Mr. Rios stated thousands of supporters have voiced their opinions through the customer support network and through the public process.

Al Hernandez, an employee of Blue Shield, spoke in favor of the proposed project based on possible job and revenue creation and the ability to patronize a variety of stores. Mr. Hernandez also stated he was one of the supporters of the proposed project who was harassed by the opposition at the previous public hearing.

Tracy Elliott spoke in opposition to the proposed project based on her concerns regarding the weakened economic conditions.

Linda Nelson, an associate of Wal-Mart, spoke in favor of the proposed project based on the perception of Measure R to not restrict big box retail. Ms. Nelson also stated she went early to the previous public hearing based on the attendance at the Planning Commission meeting and did not receive advanced notification of the process.

Catherine Brown spoke in opposition to the proposed project based on her concerns regarding poor customer service, view restrictions from the corner on Lower Sacramento Road and Kettleman Lane, and the negative overall affects on the community.

Dale Felubs spoke in opposition to the proposed project based on his concerns regarding the negative tactics used by Wal-Mart and the negative affect on the community.

After receiving no further comment, Mayor Hansen closed the public hearing.

In response to Mayor Hansen, Mr. Schwabauer stated the City Council can send the matter back to the Planning Commission with direction if it felt like the EIR could not be certified, or in the alternative the City Council can go ahead and certify the EIR if it feels like it has received adequate information to do so.

Mayor Hansen provided general comments on the sufficiency of the EIR based on the additional information received, the ongoing history of the proposed project, and the litigation process which will not end with the decision this evening.

Council Member Mounce provided general comments on the inadequacy of the EIR, numbers changing for tax revenue, economic concerns, urban decay, traffic on Interstate 5, and possible locations on the east side of town for the proposed project. In response to Council Member Mounce, Mr. Bartlam stated the square footage of the 11 pads is approximately 113,000.

Mayor Pro Tempore Katzakian provided general comments about the sufficiency of the EIR, the thorough review of documentation over the last seven years, and the completion of the four corners at Kettleman Lane and Lower Sacramento Road.

Council Member Johnson provided general comments about the sufficiency of the EIR, the ongoing changes and predictions in the economy, project timeline, businesses that are successful in the existing climate because of good owner and tenant relations, and the consideration of only those items that are relevant to the EIR.

Council Member Hitchcock provided general comments about the inadequacy of the EIR, the importance of the Planning Commission decision, the negative affect on the community and cumulative impacts, the conflicting information provided by the experts, and citizen opinion opposing the proposed project.

City Attorney Schwabauer clarified that the City Council if it so desires may adopt the resolution approving the EIR as revised with everything from paragraph five on the third page to paragraph six on the last page stricken and the conclusion revised accordingly to eliminate the findings and statements of consideration.

Council Member Johnson made a motion, second by Mayor Hansen, to adopt Resolution No. 2009-27 certifying the Final Revised Environmental Impact Report (EIR-03-01) relating to the Lodi Shopping Center Project as recommended by the City Attorney.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Johnson, Mayor Pro Tempore Katzakian, and Mayor Hansen

Noes: Council Member Hitchcock, and Council Member Mounce

Absent: None

C. Adjournment

There being no further business to come before the City Council, the meeting was adjourned at 11:31 p.m.

ATTEST:

Randi Johl
City Clerk